IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7594 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANABHAI MERABHAI DHODHARI

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/03/2000

ORAL JUDGEMENT

1. Leave to amend cause title.

2. The District Magistrate, Bhavnagar, passed an order on July 3, 1999, in exercise of powers under Section 3(2) of the Gujarat Prevention Anti-Social

Activities Act, 1985 ("PASA Act" for short), detaining the present petitioner-Kanabhai Merabhai Dhodhari. The petitioner has approached this Court by way of this petition under Article 226 of the Constitution, challenging that order of detention.

3. The grounds of detention dated July 3, 1999 indicate that the detaining authority took into consideration four offences registered with Bhavnagar City "B" Division and "A" Division Police Stations for various offences punishable under Indian Penal Code. The detaining authority also took into consideration statements of three anonymous witnesses in respect of various incidents. The authority was satisfied that the fear expressed by the witnesses qua the petitioner is genuine and, therefore, it exercised powers under Section 9(2) of the PASA Act, by claiming privilege of not disclosing identity of these witnesses. The detaining authority considered the possibility of resorting to less drastic remedies, but came to conclusion that in order to immediately prevent the petitioner from pursuing his activities of a "dangerous person" as defined under the PASA Act, prevention under the said Act is required.

4. The petitioner, in this petition, challenges the order of detention on various counts. However, Ms. Pahwa, learned advocate appearing for the petitioner, has restricted her arguments on aspect of delay in considering representation. She submitted that two separate representations were addressed to the detaining authority as well as the Additional Chief Secretary to the State of Gujarat on 19th August, 1999. They were, however, despatched on 9th September, 1999 and received by both the authorities on 10th September, 1999. According to Ms. Pahwa, nothing has been done thereafter.

5. Mr. Dave, learned Assistant Government Pleader appearing for the respondents, submitted that the detaining authority, after receiving the representation, forwarded the same to the Government on 27th September, 1999 and the Government, in turn, rejected that representation on 1st October, 1999. Regarding the representation addressed to the Additional Chief Secretary, he submitted that it was received by the Additional Chief Secretary on 16th September, 1999 and was rejected on 20th September, 1999. He submitted that, as such, there is no delay in considering the representation.

6. On being asked by this Court, Mr. Dave, after

perusing the files, submitted that the detention was approved by the State Government on July 12, 1999.

7. It is evident from Annexure-D that the detaining authority received the representation on September 10, 1999. As per statement made by Mr. Dave, after perusing the file, the same was forwarded by him to the Government on 23rd September, 1999. There was, therefore, a gap of 17 days between the two dates. When the representation was received by the detaining authority, Government had already approved the detention. As such, nothing was required to be done by the detaining authority except forwarding the representation to the Government and, therefore, lapse of 17 days in forwarding the representation has resulted into denial of right of making an effective representation. The detaining authority has not filed any affidavit in reply and, as such, no attempt is made to explain this delay. In this view of the matter, the petition deserves to be allowed on the count of delay alone in forwarding the representation by the detaining authority. The delay in forwarding the representation has affected the right of the detenu of making an effective representation and, therefore, continued detention of the petitioner would stand vitiated. The petition, therefore, deserves to be allowed.

8. In view of the above discussion, the petition is allowed. The impugned order of detention dated July 3, 1999, passed against the detenu is hereby quashed. The detenu-Kanabhai Merabhai Dhodhari is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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